

APPEAL NO. 002427

Following a contested case hearing (CCH) held on September 27, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the appellant's (claimant herein) compensable injury did not include a torn medial meniscus at the posterior horn of the right knee. The claimant appeals, arguing that this determination was contrary to the evidence. The respondent (self-insured herein) replies that there is sufficient evidence to support the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The parties stipulated that the claimant sustained a compensable injury to his right knee on _____. The claimant described the accident as taking place when the vehicle he was driving was struck from behind by another vehicle while he was performing his duties as a messenger for the self-insured. The claimant testified that the impact from the collision caused his right foot to slip off the brake pedal and his right knee to strike the dashboard of the vehicle he was operating. Dr. H, the claimant's treating doctor, related the claimant's torn medial meniscus at the posterior horn of his right knee to the motor vehicle accident on _____. Ms. B, the driver of the vehicle that rear-ended the claimant, testified that both vehicles were stopped at a red light and her foot slipped off the brake and she rolled into the van driven by the claimant. Ms. B testified that there was no visible damage to either vehicle.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the great weight and

preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Applying this standard of review, we do not find that the great weight and preponderance of the evidence was contrary to the finding of the hearing officer that the claimant's injury did not extend to his torn medical meniscus at the posterior horn of the right knee. The claimant still bears the burden of proving the extent of a compensable injury. In the present case, we do not find that the hearing officer failed to apply the correct legal standard or that the great weight and preponderance of the evidence is contrary to her factual determinations. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Judy L. Stephens
Appeals Judge